



FY 2016 Statutory Checklists

A Mandatory Reference for ADS Chapter 200

Full Revision Date: 06/06/2016
Responsible Office: GC
File Name: 200sbs_060616

FY 2016 Statutory Checklists

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I. INTRODUCTION

The following checklists are intended to be convenient references when planning and implementing foreign assistance programs. The checklists do not have every country prohibition or restriction. Consult the attorneys assigned to your Bureau or Mission to determine if there are additional country-specific or activity-specific prohibitions and "notwithstanding" authorities. **With regard to the applicability of a particular checklist item, please consider whether there is any factual information since completion of the FY 2015 Checklist that may trigger application of a restriction to the country or activity in FY 2016. Contact the listed point of contact, the USAID country desk officer, or the GC attorneys assigned to your Bureau or Mission, as applicable.**

Please see ADS 201.3.9 to determine when a checklist should be prepared. In doing a checklist you make a reasonable inquiry, determine the applicability of each statutory reference, and set forth any additional comments or issues (for example, "We are not aware of any information that requires action under this section" or "To the best of our knowledge, we are not aware of any violations under this provision" or "Not applicable because no FY16 Economic Support Fund (ESF) funds will be programmed to assist the government of X").

• **Country Checklist**

The Country Checklist includes the important provisions of general application from the Foreign Assistance Act of 1961, as amended (FAA), and the FY 2016 Department of State, Foreign Operations, and Related Programs Appropriations Act, (the Act or FY 2016 Act), Division K of P.L. 114-113. Please note that the Country Checklist does not list every statutory or regulatory provision applicable to a particular country.

- **Activity Checklist**

The Activity Checklist has the activity specific provisions of the FAA and the FY 2016 Act.

- **Notwithstanding Authorities**

There are various "notwithstanding" authorities that USAID might use to provide assistance when it would otherwise be prohibited. Some examples follow:

1. Disaster Assistance (FAA Sec. 491).
2. Health and Disease Prevention (FAA 104(c)(4); and child survival activities and disease programs including activities relating to HIV/AIDS (FY 2016 Act, Sec. 7058). Please note that these health-related notwithstanding authorities do not cover family planning activities.
3. Non-governmental organizations and P.L. 480 (FY 2016 Act, Sec. 7027).
4. Funds appropriated under the heading Complex Crises Fund to support programs and activities to prevent or respond to emerging or unforeseen foreign challenges and complex crises overseas. These funds are to remain available until expended notwithstanding any other provision of law, except sections 7007, 7008, and 7018 of the Act and section 620M of the FAA (FY 2016 Act, Title III).
5. Funds appropriated in Titles III and VI that are made available for victims of war; displaced children; displaced Burmese; and victims of trafficking in persons and combating trafficking (FY 2016 Act, Sec. 7034(a)).
6. Assistance from all accounts for "democracy programs" (programs that support good governance, credible and competitive elections, freedom of expression, association, assembly, and religion, human rights, labor rights, independent media, and the rule of law and that otherwise strengthen the capacity of democratic political parties, governments, nongovernmental organizations and institutions, and citizens to support the development of democratic states, and institutions that are responsive and accountable to citizens. (FY 2016 Act, Sec. 7032(b)-(c)).
7. Funds appropriated under Title III in the Act and prior Acts for non-lethal assistance for programs to address the needs of civilians affected by conflict in Syria and for programs that seek to: establish governance in Syria that is representative, inclusive, and accountable; expand the role of women in negotiations to end the violence and in any political transition in Syria; develop and implement political processes that are democratic, transparent, and adhere to the rule of law; further the legitimacy of the Syrian opposition through cross-border programs; develop civil society and an independent media; promote economic development; document, investigate and prosecute human rights violations; counter extremist ideologies; and assist Syrian refugees whose education has been interrupted by the ongoing conflict to complete higher education requirements at regional academic institutions (FY 2016 Act, Sec. 7041(h)(1)).

8. ESF funded assistance for Burma. (FY 2016 Act, Sec. 7043(b)(1)).
9. Afghanistan (only for loan defaults under section 7012 of the FY 201 Act or any similar provision of law (i.e., section 620(q) of the FAA and section 660 of the FAA) (FY 2016 Act, Sec. 7044(a)(4)(A)(i)).
10. Funds appropriated by the Act under Titles III and IV for assistance for Pakistan may be made available notwithstanding any other provision of law, except for subsection 7044(d) (FY 2016 Act, Sec. 7044(d)(3)(D)).
11. Funds appropriated by the Act under the heading “Economic Support Fund” for assistance for Afghanistan and Pakistan may be provided for cross border stabilization and development programs between Afghanistan and Pakistan or between either country and the Central Asian countries. (FY 2016 Act, Sec. 7044(f)).
12. Funds appropriated by the Act to carry out the provisions of sections 103 through 106, and Chapter 4 of Part II, of the FAA may be used to support environment programs (FY 2016 Act, Sec. 7060(c)(1)).
13. Title II Emergency Programs (P.L. 480, Sec. 202(a)).
14. Title III funds in the FY 2016 Act for food security and agricultural development programs, to prevent and address food shortages (FY 2016 Act, Sec. 7060(d)(1)).

II. **COUNTRY CHECKLIST**

This checklist has the general provisions to be completed for a country.

1. **NARCOTICS CERTIFICATION.** (Sec. 706(1) of the Foreign Relations Authorization Act, Fiscal Year 2003 (P.L. 107-228) (FRAA), September 30, 2002). As a result of Presidential Determination No. 2015-12, Fed. Reg. Vol. 80, No. 182, 57061-66 (September 14, 2015) (see: www.gpo.gov/fdsys/pkg/FR-2015-09-21/pdf/FR-2015-09-21.pdf), the narcotics certification applies only to Bolivia, Burma, and Venezuela. Afghanistan, The Bahamas, Belize, Bolivia, Burma, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, India, Jamaica, Laos, Mexico, Nicaragua, Pakistan, Panama, Peru, and Venezuela were identified as “major drug transit or major illicit drug producing” countries. Of these countries, the President determined that Burma, Bolivia, and Venezuela had “failed demonstrably” during the last 12 months to adhere to international counternarcotic agreements and to take counternarcotic measures set forth in U.S. law. The President has issued a national interest waiver so that the U.S. may continue to support programs to aid Burma and Venezuela.

For FY 2016, this restriction only applies to Bolivia. It is either inapplicable or waived for all other countries.

Is this applicable? Please comment.

2. **INDEBTEDNESS TO U.S. CITIZENS.** (FAA Sec. 620(c)). Absent a Presidential determination based on national security needs, assistance to a government is prohibited if the government is indebted to any U.S. citizen or person for goods or services furnished or ordered, and (a) such citizen or person has exhausted available legal remedies, (b) the debt is not denied or contested, or (c) the indebtedness arises under an unconditional guaranty of payment given by such government (or controlled entity).

Is this applicable? Please comment.

3. **SEIZURE OF U.S. PROPERTY.** (Sec. 527 of the Foreign Relations Authorization Act, 1994-95, which superseded FAA Sec. 620(e)). Absent a waiver by the Department of State, assistance to a government is prohibited if that government has expropriated or seized ownership or control of property at least 50 percent beneficially owned by U.S. citizens without:

- (a) returning the property to the owner;
- (b) compensating the owner for the property;
- (c) offering a domestic procedure providing prompt, adequate, and effective compensation for the property; or
- (d) submitting the dispute to international arbitration.

As of 1/13/2016, no country is subject to this restriction.

Is this applicable? Please comment.

4. **SPECIFIC COUNTRIES.** (FAA Secs. 620(a) and 620(f); FY 2016 Act, Sec. 7007). Assistance is specifically prohibited in the FY 2016 Act to Cuba, Iran, North Korea, and Syria. (Note: The restriction in Sec. 7007 applies only to the governments of the four listed countries.)

Is this applicable? Please comment.

5. **LOAN DEFAULT.** (FAA Sec. 620(q); FY 2016 Act, Sec. 7012 (Brooke Amendment); see ADS 623). Under section 620(q), absent a waiver, assistance is prohibited to any country after six months of default on the interest or principal of any FAA loan. Under the Brooke Amendment,

absent a waiver, assistance is prohibited only to the government of any country under section 7012 after the default on the interest or principal of any U.S. foreign assistance loan for more than one calendar year.

The 620(q) and Brooke Amendment reports can be found on the USAID intranet at <https://pages.usaid.gov/M/CFO/washington-financial-services-m-cfo-wfs>

[Contact: M/CFO/WFS/Credit Team, Jaheda Guliwala, 202-567-5181]

Is this applicable? Please comment.

6. **DIPLOMATIC RELATIONS WITH U.S.** (FAA Sec. 620(t)). Assistance is prohibited if diplomatic relations between the U.S. and the recipient country are currently severed.

Is this applicable? Please comment.

7. **INTERNATIONAL TERRORISM.** (FY 2016 Act, Sec. 7021(b); FAA Secs. 620A, 620G).

Assistance is prohibited to a recipient country if the Secretary of State has determined that such country has repeatedly provided support for international terrorism (Sec. 620A). As of 1/13/16, Iran, Sudan, and Syria have been determined to be countries whose governments have repeatedly provided support for acts of international terrorism.

Assistance is prohibited to a recipient government of a country if that government has provided assistance to the government of any other country that has repeatedly provided support for international terrorism (Sec. 620G).

Assistance is prohibited to a recipient government if the President has determined it has: (1) granted sanctuary from prosecution to any individual or group which has committed an act of international terrorism; (2) otherwise supports international terrorism; or (3) is controlled by an organization designated as a terrorist organization under section 219 of the Immigration and Nationality Act (Sec. 7021(b)).

The President has authority to waive sections 620A and 7021(b) for national security interests or (subject to certain exceptions) humanitarian reasons and to waive section 620G for assistance in the national interest.

[Contact: State counterpart desk officer.]

Is this applicable? Please comment.

8. **EXPORT OF LETHAL MILITARY EQUIPMENT TO TERRORIST STATES.** (FY 2016 Act, Sec. 7021(a); FAA Sec. 620H). Absent a waiver by the Secretary or Deputy Secretary of State on national interest grounds, assistance is prohibited to a government that provides lethal military equipment to a government designated by the Secretary of State as a State Sponsor of Terrorism (those described in 7 above).

[Contact: State counterpart desk officer.]

Is this applicable? Please comment.

9. **DISCRIMINATION.** (FAA Sec. 666(b)). Assistance is prohibited to a recipient country that objects, on the basis of race, religion, national origin, or sex, to the presence of any officer or employee of the U.S. who is present in such country to carry out economic development programs under the FAA.

Is this applicable? Please comment.

10. **NUCLEAR TECHNOLOGY.** (Arms Export Control Act (P.L. 90-629) Secs. 101, 102)

- (a) Absent special certification by the President, assistance is prohibited if the recipient country has either delivered or received from any other country nuclear enrichment or reprocessing equipment, materials, or technology, without specified arrangements or safeguards any time after August 3, 1977.
- (b) Absent special certification by the President, assistance is prohibited if the recipient country has, on or after June 30, 1994:
 - (1) transferred a nuclear explosive device or components or design information for such a device to a non-nuclear weapon state,
 - (2) detonated a nuclear explosive device (if the country is a non-nuclear weapon state),
 - (3) received a nuclear explosive device or components or design information for such a device (if the country is a non-nuclear weapon state), or
 - (4) exported (or attempted to export) illegally from the U.S. any material, equipment, or technology that would contribute significantly to the ability of a country to manufacture a nuclear explosive device.

As of 1/14/16, the restriction applies to DPRK.

[Contact: State counterpart desk officer.]

Is this applicable? Please comment.

11. **MILITARY COUP D'ETAT OR DECREE.** (FY 2016 Act, Sec. 7008). Assistance is prohibited to the government of a country where the duly elected head of government of the recipient country has been deposed by military coup d'état or decree, or by a coup d'état or decree in which the military plays a decisive role, unless the Secretary of State has certified and reported to Congress that a democratically elected government has taken office. The restriction does not apply to assistance to promote democratic elections or public participation in democratic processes.

As of 1/13/16, the coup restriction applies to Sudan and Thailand. No assistance can be provided for Sudan or Thailand that would be inconsistent with the applicability of this restriction.

Is this applicable? Please comment.

12. **EXPLOITATION OF CHILDREN.** (FAA Sec. 116(b)). Assistance is prohibited where the Department of State has determined that the recipient government has failed to take appropriate and adequate measures, within its means, to protect children from exploitation, abuse, or forced conscription into military or paramilitary services.

Is this applicable? Please comment.

13. **TAXATION OF UNITED STATES ASSISTANCE** (FY 2016 Act, Sec. 7013(a)-(b)). Absent a Secretary of State waiver, assistance is prohibited to a foreign country under a new bilateral agreement, unless such new agreement includes a provision that assistance provided by the United States shall be exempt from taxation, or reimbursed by the foreign government. If taxes are collected and have not been reimbursed, 200 percent of the total taxes assessed during FY 2016 on funds appropriated by the Act and allocated for the central government of the applicable foreign country shall be withheld from obligation from funds appropriated for assistance for FY 2017.

As part of the OYB process, F will adjust country levels by the amounts owed. **No action required** by country desk.

[Contact: Check with Bureau budget office.]

Is this applicable? Please comment.

14. **PARKING FINES AND REAL PROPERTY TAXES.** (FY 2016 Act, Sec. 7053). Assistance to a recipient country must be reduced by 110 percent of the amount of unpaid parking fines and property taxes owed by the central government of a country to the District of Columbia and New York City.

As part of the OYB process, F will adjust country levels by the amounts owed. **No action required** by country desk.

[Contact: Check with Bureau budget office.]

Is this applicable? Please comment.

15. **DELIVERY OF HUMANITARIAN ASSISTANCE.** (FAA Sec. 620I). Absent a Presidential determination, assistance is prohibited where the recipient government has prohibited or otherwise restricted, directly or indirectly, the transport or delivery of U.S humanitarian assistance.

Is this applicable? Please comment.

16. **ASSISTANCE TO CUBA.** (LIBERTAD Act Sec. 111(b), P.L. 104-114; FAA Sec. 620(y), as amended by section 2810 of FY 98/99 Foreign Relations Authorization Act, P. L. 105-277.)

- (a) If a country (or any entity in the country) provided (1) nuclear fuel and related assistance and credits or (2) assistance or credits in support of the Cuban nuclear facility at Juragua, Cuba at any time after March 12, 1996, then assistance to such country must be reduced by an amount equal to the sum of any such assistance or credits, unless an exception applies.
- (b) Assistance to a recipient country must be reduced by an amount equal to the aggregate value of nuclear fuel related assistance and credits provided by that country to Cuba during the preceding fiscal year, unless Cuba:
 - (1) has ratified the Treaty on the Non-Nuclear Proliferation of Nuclear Weapons or the Treaty of Tlatelolco and Cuba is in compliance therewith;
 - (2) has negotiated and is in compliance with full-scope safeguards of the International Atomic Energy Agency not later than two years after ratification by Cuba of such treaty; and
 - (3) incorporates and is in compliance with internationally accepted nuclear safety standards.

Is this applicable? Please comment.

17. **HUMAN RIGHTS VIOLATIONS.** (FAA Secs. 116 and 502B). If the government of a country is determined to have engaged in a consistent pattern of gross violations of internationally recognized human rights, then FAA sections 116 and 502B will be triggered. Section 116 restricts assistance under FAA Part I (DA, GHP, Democracy Fund, etc.), including ESF assistance, to that government, unless the assistance will directly benefit the needy. Section 502B restricts ESF (and other security assistance) to the relevant country (there are some available mechanisms for continuing such assistance to the extent consistent with section 116).

[Contact: State counterpart desk officer.]

Is this applicable? Please comment.

18. **TRAFFICKING IN PERSONS (TIP).** (22 USC 7107). Is the country's government subject to restrictions on assistance because it does not fully comply with the minimum standards for combatting trafficking in persons under the Trafficking Victims Protection Act? For FY 2016, 23 countries were placed in this category (i.e., they were listed as "Tier 3" in the State Department's July 2015 Trafficking in Persons report). However, the President subsequently determined that restrictions on non-military assistance should apply only to the following 8 countries:

- Iran and North Korea (no non-trade-related, non-humanitarian assistance to the government of any kind)
- Eritrea, Russia, and Syria (no non-trade-related, non-humanitarian assistance to the government except for certain educational and cultural exchange programs)
- Venezuela (no non-trade related, non-humanitarian assistance to the government except for programs designated to strengthen the democratic process)
- Equatorial Guinea and Zimbabwe (no non-trade related, non-humanitarian assistance to the government except for certain economic assistance for various specific purposes with specific limitations))

If you are planning to obligate funds during FY 2016 (regardless of when the funds were appropriated) for assistance to the government of any of these countries, please check with GC or your RLO for further guidance.

[Contact: your RLO or AGC.]

Is this applicable? Please comment.

19. **EXTRADITION OF INDIVIDUALS ACCUSED OF KILLING A LAW ENFORCEMENT OFFICER.** (FY 2016 Act, Sec. 7067). Assistance is prohibited to the central government of a country that has refused to extradite to the United States any individual indicted for a criminal offense for which the maximum penalty is life imprisonment without the possibility of parole or for killing a law enforcement officer. This restriction does not apply to IDA, CCF, INCLE, MRA, ERMA and NADR funds. This restriction applies to central governments with which the United States maintains diplomatic relations and with which the United States has an extradition treaty and the government of that country is in violation of that treaty. The Secretary may waive this restriction, on a case-by-case basis, if it is important to the national interests of the United States

Posts are advised to consult with L/LEI on any extradition cases of potential concern of which they may be aware.

[Contact: State counterpart desk officer.]

Is this applicable? Please comment.

20. **ENFORCEMENT OF NONPROLIFERATION TREATIES.** (Sec. 530 of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (P.L. 103-236) (FRAA), April 30, 1994) Absent a waiver by the President, assistance under the FAA to a "non-nuclear weapon state" is prohibited if that country has been found to have terminated, abrogated, or materially violated an International Atomic Energy Agency full-scope safeguard agreement, or materially violated a bilateral U.S. nuclear cooperation agreement entered into after March 10, 1978. "Non-nuclear weapon state" means any country which is not a nuclear-weapon state, as defined by Article IX(3) of the Treaty on the Non-Proliferation of Nuclear Weapons (July 1, 1968).

[Contact: State counterpart desk officer.]

Is this applicable? Please comment.

21. **RESTRICTION ON ASSISTANCE FOR CENTRAL GOVERNMENTS SUPPORTING THE ANNEXATION OF CRIMEA BY THE RUSSIAN FEDERATION.** (FY 2016 Act, Sec. 7070(b)). Section 7070(b)(1) of the Act provides that none of the funds appropriated by the Act may be made available for assistance for the central government of a country that the Secretary of State determines and reports to the Committees on Appropriations has taken affirmative steps intended to

support or be supportive of the Russian Federation's annexation of Crimea. The Secretary of State may waive this restriction upon a certification to the Committees on Appropriations that to do so is in the national interest of the United States and includes a justification for such interest.

[Contact: State counterpart desk officer.]

Is this applicable? Please comment.

22. Direct Government-to-Government Assistance. (FY 2016 Act, Sec. 7031(a)). If direct Government-to-Government assistance (see ADS 220 for definition) is contemplated, the following country-level eligibility requirement must be met (as assessed under an inter-agency process): The government of the country is--

- (a) taking steps to publicly disclose on an annual basis its national budget, to include income and expenditures;
- (b) in compliance with the principles of section 7013 of the SFOAA regarding taxation of assistance [i.e., the government appropriately exempts assistance from taxation]; and
- (c) taking steps to protect the rights of civil society, including the freedom of association, expression and assembly.

See item 20 under the Activity Checklist for the full list of direct Government-to-Government pre-obligation requirements. This Country Checklist item is only applicable if direct Government-to-Government assistance is planned. If direct Government-to-Government assistance is planned, please contact the USAID Local Solutions Coordinator's Office point of contact Adam Jacobs.

Is this applicable? Please comment.

III. ACTIVITY CHECKLIST

This checklist is to help managers and teams ensure that activities are consistent with applicable law. Since different provisions apply at different stages of the process, this Checklist is divided into the following parts: (A) Planning, (B) Congressional Notifications, and (C) Obliging Documents.

In addition to completing this Checklist, managers and teams should check with the Desk Officer to confirm that the Country Checklist has been completed and nothing has occurred since completion of the Country Checklist that would affect USAID's ability to provide assistance.

For the most part, no distinction between DA and ESF funds is made in this Activity Checklist because the FAA provides that, to the maximum extent feasible, ESF assistance should be provided consistent with the policy directions, purposes, and programs of DA.

PART A. PLANNING

1. **PEOPLE'S REPUBLIC OF CHINA.** (FY 2016 Act, Sec. 7043(e)(2)). None of the funds appropriated or otherwise made available pursuant to the FY 2016 Act may be used to finance any grant, contract, or cooperative agreement with the People's Liberation Army (PLA) of the People's Republic of China, or any entity that the Secretary of State has reason to believe is owned or controlled by, or an affiliate of, the PLA.

Is this applicable? Please comment.

2. **ADVERSE ECONOMIC IMPACT UPON THE UNITED STATES.**

- (a) **IMPACT ON U.S. JOBS: RELOCATION; EXPORT ZONES; VIOLATION OF WORKERS' RIGHTS.** (FY 2016 Act, Sec. 7080(1)-(3); see ADS 225). Funds may not provide:

- (1) any financial incentive to a business currently located in the U.S. for the purpose of inducing such an enterprise to relocate outside the U.S. if such incentive or inducement is likely to reduce the number of employees of such business enterprise in the United States because United States production is being replaced by such enterprise outside the United States;
 - (2) assistance for any program, project, or activity that contributes to the violation of internationally recognized workers' rights, as defined in section 507(4) of the Trade Act of 1974, of workers in the recipient country, including any designated zone or area in that country; or
 - (3) any assistance to an entity outside the United States if such assistance is for the purpose of directly relocating or transferring jobs from the United States to other countries and adversely impacts the labor force in the United States.

Is this applicable? Please comment.

- (b) **PRODUCTION OF SURPLUS COMMODITIES.** (FY 2016 Act, Sec. 7025(a)). Assistance may not be provided to establish or expand production of any commodity for export if the commodity is likely to be in surplus on world markets at the time the resulting productive capacity is expected to become operative and substantial injury will be caused to U.S. producers of the same, similar, or competing commodities except for activities in a country that:

- (1) is eligible for assistance from the International Development Association, is not eligible for assistance from the International Bank for Reconstruction and Development, and does not export on a consistent basis the agricultural commodity with respect to which assistance is furnished; or
- (2) the President determines is recovering from widespread conflict, a humanitarian crisis, or a complex emergency.

Operating units should consult with their RLO or AGC and the Bureau for Food Security before relying upon the exceptions noted above.

Is this applicable? Please comment.

3. AGRICULTURAL ACTIVITIES (BUMPERS AMENDMENT). (FY 2016 Act, Sec. 7025(b)).

No development assistance funds may be used for any testing or breeding feasibility study, variety improvement or introduction, consultancy, publication, conference, or training in connection with the growth or production in a foreign country of an agricultural commodity for export which would compete with a similar commodity grown or produced in the United States unless the activity:

- (a) is designed to increase food security in developing countries and where such activities will not have a significant impact in the export of agricultural commodities of the United States;
- (b) is a research activity intended primarily to benefit American producers;
- (c) is in a country eligible for assistance from the International Development Association, is not eligible for assistance from the International Bank for Reconstruction and Development, and does not export on a consistent basis the agricultural commodity with respect to which assistance is furnished; or
- (d) is in a country the President determines is recovering from widespread conflict, a humanitarian crisis, or a complex emergency.

Operating units should refer to PD#15 (in ADS 200) and consult with their RLO or AGC and the Bureau for Food Security before relying upon the exceptions noted above.

Is this applicable? Please comment.

4. COMMUNIST ASSISTANCE. (FAA Sec. 620(h)). Arrangements should be made to ensure that United States foreign aid is not used in a manner which, contrary to the best interests of the United States, promotes or assists the foreign aid projects or activities of any country that is a Communist country for purposes of

FAA section 620(f). FAA Sec. 620(h) applies to assistance, projects or activities of the People's Liberation Army (PLA) of the People's Republic of China (PRC) including entities that are owned, controlled by or an affiliate of the PLA.

Is this applicable? Please comment.

5. **ENVIRONMENT.**

- (a) **ENVIRONMENTAL REVIEW.** (FAA Sec. 117; 22 CFR 216 (USAID Regulation 16), see ADS 204). 22 CFR 216 requires an Initial Environmental Examination, unless the proposed assistance falls within certain exceptions and other actions. CORs/AORs remain responsible for ensuring compliance with all 22 CFR 216 requirements.

Is this applicable? Please comment.

- (b) **DEBT-FOR-NATURE EXCHANGE.** (FAA Sec. 463). Assistance that will finance a debt-for-nature exchange must:

- (1) support protection of the world's oceans and atmosphere, animal and plant species, or parks and reserves; or
- (2) promote natural resource management, local conservation programs, conservation training programs, public commitment to conservation, land and ecosystem management, or regenerative approaches in farming, forestry, fishing, and watershed management.

Is this applicable? Please comment.

- (c) **TROPICAL FOREST DEGRADATION.** (FAA Sec. 118). Funds may not be used for:

- (1) the procurement or use of logging equipment, unless an environmental assessment indicates that all timber harvesting operations involved will be conducted in an environmentally sound manner and that the proposed activity will produce positive economic benefits and sustainable forest management systems;
- (2) actions that will significantly degrade national parks or similar protected areas that contain tropical forests, or introduce exotic plants or animals into such areas;

- (3) activities that would result in the conversion of forest lands to the rearing of livestock;
- (4) the construction, upgrading, or maintenance of roads (including temporary haul roads for logging or other extractive industries) that pass through relatively undegraded forest lands;
- (5) the colonization of forest lands; or
- (6) the construction of dams or other water control structures that flood relatively undegraded forest lands.

However, funds may be used for activities in (3) through (6) above if an environmental assessment indicates that the proposed activity will contribute significantly and directly to improving the livelihood of the rural poor and will be conducted in an environmentally sound manner that supports sustainable development.

- (d) **INDUSTRIAL SCALE LOGGING.** (FY 2016 Act, Sec. 7060(c)(2)(d)). Funds appropriated for biodiversity programs shall not be used to support or promote the expansion of industrial scale logging or any other extractive activity into areas that were primary/intact tropical forest as of December 30, 2013.

Is this applicable? Please comment.

- 6. **EXPROPRIATION AND LAND REFORM.** (FAA Sec. 620(g)). Assistance may not be used to finance compensation to owners for expropriated or nationalized property, except to compensate foreign nationals in accordance with a land reform program certified by the President.

Is this applicable? Please comment.

- 7. **RESTRICTIONS ON ABORTIONS AND INVOLUNTARY STERILIZATIONS.** (FAA Sec. 104(f); FY 2016 Act, Sec. 7018 and "Global Health Programs" account heading). Funds may not be used:

- (1) to pay for the performance of abortions as a method of family planning or to motivate or coerce any person to practice abortions;*
- (2) to pay for the performance of involuntary sterilization as a method of family planning or to coerce or provide any financial incentive to any person to undergo sterilizations;

- (3) to pay for any biomedical research that relates, in whole or in part, to methods of, or the performance of, abortions or involuntary sterilization as a means of family planning.;
- (4) to furnish assistance to any country or organization if the President certifies that the use of these funds by such country or organization would violate the three provisions set forth above in (1)-(3);
- (5) to lobby for or against abortion; or
- (6) to furnish assistance to any organization or program that, as determined by the President of the United States, supports or participates in the management of a program of coercive abortion or involuntary sterilization.

* For purposes of the FY 2016 Act or any other Act authorizing or appropriating funds for the Department of State, foreign operations, and related programs, the term “motivate”, as it relates to family planning assistance, shall not be construed to prohibit the provision, consistent with local law, of information or counseling about all pregnancy options.

<p>Is this applicable? Please comment.</p>

8. VOLUNTARY FAMILY PLANNING SUPPORT. (FY 2016 Act, "Global Health Programs" account heading). Funds may be made available only to voluntary family planning projects that:

- (1) Offer, either directly or through referral to, or provide information about access to, a broad range of family planning methods and services.
- (2) Meet the following requirements:
 - (a) Service providers or referral agents in the project do not implement or are not subject to quotas, or other numerical targets, of total number of births, number of family planning acceptors, or acceptors of a particular method of family planning (quantitative estimates or indicators for planning and budgeting purposes are acceptable);
 - (b) The project must not include payment of incentives, bribes, gratuities, or financial rewards to an individual in exchange for becoming a family planning acceptor or to program personnel for achieving a numerical target or quota of total number of births, number of family planning acceptors, or acceptors of a particular method of family planning;

- (c) The project must not deny any right or benefit, including right of access to participate in any program of general welfare or right of access to health care, as a consequence of any individual's decision not to accept family planning services;
 - (d) The project must provide family planning acceptors comprehensible information of the health benefits and risks of method chosen; and
 - (e) The project must ensure that experimental contraceptive drugs and devices and medical procedures are provided only in the context of scientific study in which participants are advised of potential risks and benefits.
- (3) In awarding grants for natural family planning under section 104 of the FAA no applicant may be discriminated against because of such applicant's religious or conscientious commitment to offer only natural family planning; and additionally, all such applicants must comply with the requirements set forth above under (1).

Is this applicable? Please comment.

9. HIV/AIDS.

- (a) **MEDICALLY ACCURATE INFORMATION ON CONDOMS.** (FY 2016 Act, "Global Health Programs" account heading). Information provided about the use of condoms as part of projects or activities that are funded from amounts appropriated under the FY 2016 Act shall be medically accurate.* Such information must be consistent with USAID's fact sheet entitled, "USAID: HIV/STI Prevention and Condoms, which may be accessed at: <http://www.usaid.gov/sites/default/files/documents/1864/CondomSTIIssueBrief.pdf>.

* Note: An identical requirement has been included in all appropriations acts since FY 2004.

Is this applicable? Please comment.

- (b) **CONSCIENCE CLAUSE.** (Sec. 301(d) of the U.S. Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003, as amended (P.L. 108-25) (Leadership Act), see AAPD 14-04). An organization, including a faith-based organization, that is otherwise eligible to receive FY 2004 or later funds for HIV/AIDS prevention, treatment, or care

(1) shall not be required, as a condition of receiving the assistance:

- a. to endorse or utilize a multisectoral (i.e., ABC) or comprehensive approach to combating HIV/AIDS; or
 - b. to endorse, utilize, make a referral to, become integrated with or otherwise participate in any program or activity to which the organization has a religious or moral objection; and
- (2) shall not be discriminated against in the solicitation or issuance of grants, contracts, or cooperative agreements under such provisions of law for refusing to meet any requirement described in paragraph (1).

Is this applicable? Please comment.

- (c) **PROSTITUTION AND SEX TRAFFICKING – LIMITATION ON USE OF FUNDS.** (Leadership Act, Sec. 301(e)). FY 2004 or later funds for HIV/AIDS activities may not be used to promote or advocate the legalization or practice of prostitution or sex trafficking. This prohibition does not restrict the provision to individuals of palliative care, treatment, or post-exposure pharmaceutical prophylaxis, and necessary pharmaceuticals and commodities, including test kits, condoms, and when proven effective, microbicides.

Is this applicable? Please comment.

- (d) **PROSTITUTION AND SEX TRAFFICKING – ORGANIZATIONAL ELIGIBILITY.** (Leadership Act, Sec. 301(f); FY 2004 Act, Sec. 595 and Statement of Managers, see AAPD 14-04). Any non-U.S. NGO or PIO receiving FY 2004 or later funds for HIV/AIDS activities must have a policy explicitly opposing prostitution and sex trafficking. This requirement is the subject of a Supreme Court Decision and is thus only applicable to certain non-exempt non-U.S. organizations. Please contact your cognizant RLO or GC/GH if you have any questions regarding application of this requirement. The following organizations are statutorily exempt from this requirement: the Global Fund to Fight AIDS, Tuberculosis and Malaria; the World Health Organization (including WHO's six regional offices: The Americas (PAHO), South-East Asia (SEARO), Africa (AFRO), East Mediterranean (EMRO), Europe (EURO), and Western Pacific (WPRO)); the International AIDS Vaccine Initiative; and any "United Nations agency".

Is this applicable? Please comment.

10. **INTERNATIONAL CONFERENCES.** (FY 2016 Act, Sec. 7046), see Guidance on Funding Foreign Government Delegations to International Conferences,

Mandatory Reference to ADS 302, 303, 306, 308, 350, and 522). Funds made available to carry out Chapter 1 of Part I of the FAA (e.g. GHP, DA) may not be used to pay the costs for participation of another country's delegation at international conferences held under the auspices of multilateral or international organizations. This restriction does not apply to ESF, TI, CCF or IDA.

Is this applicable? Please comment.

11. **LEGISLATIVE ACTION.** (FAA Sec. 611(a)(2)). If the obligation is more than \$500,000 and requires legislative action within the recipient country, there must be a basis for a reasonable expectation that such action will be completed in time to permit orderly accomplishment of the purpose of the assistance.

Is this applicable? Please comment.

12. **LOANS.**

- (a) (FAA Sec. 122(b)). In making loans, USAID must consider the following:
- (1) Information and conclusion on the capacity of the country to repay the loan at a reasonable rate of interest.
 - (2) Does the activity give reasonable promise of assisting long-range plans and programs designed to develop economic resources and increase productive capacities?
 - (3) If repayable in dollars, the interest rate must be at least 2 percent per annum during a grace period which is not to exceed 10 years, and at least 3 percent per annum thereafter, but no higher than the applicable legal rate of interest of the country in which the loan is being made.

Is this applicable? Please comment.

- (b) **PRODUCTIVE ENTERPRISES COMPETING WITH U.S. ENTERPRISES.** (FAA Sec. 620(d)). No FAA loan funds may be used for any productive enterprise that will compete with U.S. enterprises, unless:
- (1) There is an agreement by the recipient country to prevent export for use or consumption in the U.S. of more than 20 percent of the enterprise's annual production during the life of the loan; or
 - (2) If in the absence of such an agreement, the President has established import controls to effectuate that agreement.

This may also be waived by the President due to national security interests.

Is this applicable? Please comment.

13. **POLICE AND PRISONS.** (FAA Sec. 660(a)). Assistance may not be used to provide training, advice, or any financial support for police, prisons, or other law enforcement forces (see exceptions, including those in sections 660(b), 119 and 534 of the FAA; section 536 of the FY 2004 Act (permanent provision of law); sections 7044(a)(4)(A)(i) (only with regard to Afghanistan), 7034(b) (extends FAA 660(b)(6) to regional activities), 7049(a) (community-based police assistance), 7034(b)(5) (prison conditions), and 7066(b) (prohibition on use of torture) of the FY 2016 Act).

Is this applicable? Please comment.

14. **PUBLICITY, PROPAGANDA, AND LOBBYING.** (FY 2016 Act, Sec. 7055; Anti-Lobbying Act, 18 U.S.C. 1913). Assistance may not be used, intended, or designed to influence a Member of Congress, a jurisdiction or any official of any government in the United States, to favor, adopt, or oppose, by vote or otherwise, any legislation, law, ratification, policy, or appropriation; to influence in any way the outcome of a political election in the United States; or for any publicity or propaganda purposes not authorized by Congress. There are some exceptions to this general rule; please consult your RLO or AGC.

Is this applicable? Please comment.

15. **SECURITY FORCES.** (FAA Sec. 620M). Assistance may not be provided to any unit of the security forces of a foreign country if the Secretary of State has credible information that such unit has committed a gross violation of human rights. "Security forces" are understood to be members of the law enforcement community or the military. Prison guards, customs police, border police, and tax police would be examples of persons included in the category. State Department implementation guidance requires that the Post and Washington vet security force units or individuals prior to the provision of SFOAA-funded training or assistance.

See State Cable 34981 (January 2003) and State Cable 160328 (November 2007) and the State Department Leahy Amendment compliance guide.

Is this applicable? Please comment.

16. **HUMANITARIAN ASSISTANCE CODE OF CONDUCT.** (Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005 (P.L. 109-13) Sec. 2110). International Disaster and Famine Assistance, and Transition Initiatives funds may not be obligated directly by USAID in an assistance agreement or an acquisition agreement with any organization that fails to adopt a code of conduct that provides for the protection of beneficiaries of assistance from sexual exploitation and abuse in humanitarian relief operations.

Is this applicable? Please comment.

17. **FOREIGN ASSETS CONTROL REGULATIONS.** Is assistance being provided or a payment being made to a national of a country subject to trade and economic sanctions administered by the Office of Foreign Assets Control (OFAC) of the Department of Treasury or to any individual or entity subject to targeted trade and economic sanctions administered by OFAC? See OFAC website: <http://www.ustreas.gov/ofac/>. If so, has a license been issued to USAID by OFAC?

[Contact: GC/DCHA, Harold Cohen, 202-712-5172.]

Is this applicable? Please comment.

18. **TOBACCO.** (FY 2016 Act, Sec. 7050) Funds made available in the FY 2016 Act may not be used to “promote the sale or export of tobacco or tobacco products, or to seek the reduction or removal by any foreign country of restrictions on the marketing of tobacco or tobacco products, except for restrictions which are not applied equally to all tobacco or tobacco products of the same type.”

Is this applicable? Please comment.

19. **PRIOR APPROVAL BY HOST GOVERNMENT.** (FY 2016 Act, Sec. 7032(e). With respect to assistance for democracy, human rights, and governance activities under the Act, the organizations implementing such assistance, the specific nature of that assistance, and the participants in such programs shall not be subject to the prior approval by the government of any foreign country.

Is this applicable? Please comment.

20. **GOVERNMENT-TO-GOVERNMENT ASSISTANCE.** (FY 2016 Act, Sec. 7031(a)). Funds appropriated by the Act may be made available for direct Government-to-Government (G2G) assistance only if the requirements in (a) and (b) below are met:

- (a) each implementing agency or ministry to receive assistance has been assessed and is considered to have the systems required to manage such assistance and identified vulnerabilities or weaknesses of such agency or ministry have been addressed; and
 - (1) the recipient agency or ministry employs and utilizes staff with the necessary technical, financial, and management capabilities;
 - (2) the recipient agency or ministry has adopted competitive procurement policies and systems;
 - (3) effective monitoring and evaluation systems are in place to ensure that such assistance is used for its intended purposes;
 - (4) no level of acceptable fraud is assumed; and
 - (5) the government of the recipient country is taking steps to publicly disclose on an annual basis its national budget, to include income and expenditures;
- (b) the government of the recipient country is in compliance with the principles in section 7013 of the Act;
- (c) the recipient agency or ministry is not headed or controlled by an organization designated as a foreign terrorist organization under section 219 of the Immigration and Nationality Act;
- (d) the Government of the United States and the government of the recipient country have agreed in writing on clear and achievable objectives for the use of such assistance, and that such assistance should be made on a cost-reimbursable basis; and
- (e) the government of the recipient country is taking steps to protect the rights of civil society, including the freedom of association, expression and assembly.

Note, criteria listed in (a)(5), (b), and (e) in the above section are also noted in Country Checklist, item 22)

Funds may not be used for any foreign country for debt service payments owed by any country to any international financial institution, as defined by section 7034(r)(3) of the SFOAA (Sec. 7031(a)(6)).

<p>Is this applicable? Please comment.</p>

- 21. MILITARY ASSISTANCE.** (FAA Sec. 531(e), and "specific/general" rule of appropriations law). Congress has explicitly provided that ESF funds may not be used for military or paramilitary purposes (e.g., combat training programs and

exercises or support for the military). Furthermore, the "specific/general" principle also prohibits USAID economic assistance from being used for military assistance, including assistance to foreign military forces, members of non-state armed groups, or combatants who have not been disarmed and demobilized in anticipation of being returned to civilian life. Whether a particular proposed activity could constitute impermissible military assistance is generally an issue requiring fact-specific legal review, and program staff who require clarification should contact GC or the responsible RLO for more information on this restriction.

Is this applicable? Please comment.

PART B. CONGRESSIONAL NOTIFICATIONS

1. **GENERAL NOTIFICATION.** (FY 2016 Act, Sec. 7015; FAA Sec. 634A). Obligations must be notified to Congress. This is traditionally accomplished through the annual Congressional Presentation. Post FAA 653(a) country/bureau narratives will provide a second opportunity to notify activities after 653(a) levels have been negotiated with Congress, and may also be a vehicle to meet Special Notification requirements. Additionally, unless otherwise provide by the SFOAA, a new Congressional Notification must be made 15 days in advance of the obligation if the amount of the obligation has increased 10 percent from that previously notified.

Is this applicable? Please comment.

2. **SPECIAL NOTIFICATION.** For activities, countries, and other actions requiring special notification as a result of the FY 2016 Act see the attached Annex GC memo, paragraph 1. (Note that per section 7015(c) of the FY 2016 Act reliance on notwithstanding authority known at the time of submission of the CN for a special notification country per section 7015(f) must be mentioned in such special notification.) For a full list of special notification requirements, including those contained in other statutes, refer to the Legal References for CNs Annex to the CBN guidance distributed by F.

Is this applicable? Please comment.

PART C. OBLIGATING DOCUMENTS

1. **SOURCE AND NATIONALITY.** (See ADS 310 and ADS 312).
 - (a) **GENERAL.** (FAA Sec. 604(a)); 22 C.F.R. Sec. 228 (revised). All procurement must be from the U.S., the recipient country or developing

countries¹, except as otherwise determined in accordance with Agency rules, including the DFA Procurement Guidance and procurement authorities for the New Independent States (NIS). If planning a procurement elsewhere, a waiver must be obtained.

Is this applicable? Please comment.

- (b) **AUTOMOBILES – BUY ONLY U.S. MADE MOTOR VEHICLES.** (FAA Sec. 636(i)). Assistance may not be used to finance the purchase, sale, long-term lease, exchange, or guaranty of the sale of motor vehicles manufactured outside the U.S., unless a waiver is obtained.

Is this applicable? Please comment.

- (c) **AGRICULTURAL PROCUREMENT.** (FAA Sec. 604(e)). Agricultural commodities and products thereof must be procured within the U.S. unless the commodity or product could not be reasonably produced in the U.S. in fulfillment of the particular assistance program. Waivers are available in some circumstances.

Is this applicable? Please comment.

- (d) **CONSTRUCTION OR ENGINEERING SERVICES.** (FAA Sec. 604(g)). No engineering or construction services may be procured from advanced developing countries² eligible under Code 941 that have attained competitive capability in international markets, *unless*:
- (1) The advanced developing country is receiving direct economic assistance under the FAA, and
 - (2) Its own assistance program would permit U.S. firms to compete for similar services.

Is this applicable? Please comment.

¹ The revised 22 CFR 228 contains a definition of “developing countries” and “advanced developing countries.” The revised ADS 310 has a current list of both developing and advanced developing countries.

² The revised 22 CFR 228 contains a definition of “developing countries” and “advanced developing countries.” The revised ADS 310 has a current list of both developing and advanced developing countries.

2. **CASH TRANSFERS – REQUIREMENT FOR SEPARATE ACCOUNT.** (FY 2016 Act, Sec. 7026(b)). If assistance is in the form of a cash transfer or nonproject sector assistance, all such cash payments must be maintained by the country in a separate account and not commingled with any other funds (unless such requirements are waived by Congressional notice for nonproject sector assistance).

Is this applicable? Please comment.

3. **CAPITAL ASSISTANCE.**

- (a) **MISSION DIRECTOR CERTIFICATION/ASSISTANT ADMINISTRATOR DETERMINATION.** (FAA Sec. 611(e)). When capital assistance is proposed (for example, construction) with ESF, DA or GHP funds, and total U.S. assistance for it will exceed \$1 million, the Mission Director must certify and the Regional Assistant Administrator must take into consideration the country's capability to maintain and utilize the assistance effectively.

Is this applicable? Please comment.

- (b) **DEVELOPMENTALLY SOUND PROJECTS.** (Jobs Through Export Act of 1992, Sections 303 and 306(b)), P. L. 102-549, 22 U.S.C. 2421b and 2421d(b). If assistance is being provided for a capital activity, the activity must be developmentally sound and measurably alleviate the worst manifestations of poverty or directly promote environmental safety and sustainability at the community level.

Is this applicable? Please comment.

- (c) **U.S. ENGINEERING SERVICES.** (FAA Sec. 601(d)). If providing capital (for example, construction) assistance, U.S. engineering and professional services must be used to the maximum extent, consistent with U.S. interests.

Is this applicable? Please comment.

4. **ASSISTANCE GENERATING LOCAL CURRENCY.** (FY 2016 Act, Sec. 7026(a)). If assistance is furnished to a foreign government under arrangements that result in the generation of local currencies, then:

- (a) USAID must:

- (1) Require that local currencies be deposited in a separate account established by the recipient government;
 - (2) Enter into an agreement with that government providing the amount of local currencies to be generated and the terms and conditions under which the currencies so deposited may be utilized; and
 - (3) Establish by agreement the responsibilities of USAID and the host government to monitor and account for deposits into and disbursements from the separate account.
- (b) Local currencies, or an equivalent amount of local currencies, can be used only to carry out the purposes of DA or ESF chapters of the FAA (depending on which chapter is the source of the assistance) or for the administrative requirements of the United States Government.
- (c) USAID should take all necessary steps to ensure that the equivalent of local currencies disbursed from the separate account is used for the agreed purposes.
- (d) If assistance is terminated to a country, unencumbered balances of funds remaining in a separate account should be disposed of for purposes agreed to by the recipient government and the United States Government.

Is this applicable? Please comment.

5. **ALCOHOLIC BEVERAGES AND CERTAIN ENTERTAINMENT EXPENSES.** (FY 2016 Act, Sec. 7020(b)). GHP, DA, or ESF may not be used for alcoholic beverages or entertainment expenses that are substantially of a recreational nature.

Is this applicable? Please comment.

6. **STATE DEPARTMENT NOTIFICATION OF INTERNATIONAL AGREEMENTS OBLIGATING \$25 MILLION OR MORE.** (see ADS 349, ADS 308 and Circular 175). The date of signing and the amount involved must be cabled to State's Office of Assistant Legal Adviser for Treaty Affairs (L/T) immediately upon signing and the full text of the agreement should be pouched to State/L/T within 20 days of signing.

Is this applicable? Please comment.

7. **ADEQUATE PLANNING.** (FAA Sec. 611). Before an obligation of more than \$500,000, the following must have been completed:

(a) Plans necessary to carry out the assistance, including engineering, financial, and other plans; and

(b) A reasonably firm estimate of the cost to the U.S. of the assistance.

And, if a plan in (a) relates to a water or water-related land resource construction, the plan should include a computation of benefits and costs. This figure must be computed to the extent practicable in accordance with the principles, standards, and procedures established pursuant to the Water Resources Planning Act (42 U.S.C. 1962, et seq.).

Is this applicable? Please comment.
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